IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8366 OF 2004

Kamal Mills Stores & others .... Petitioners
Vs.
Badruddoja Mohammad Ramjan .... Respondent

Shri A.Y. Sakhare with Ms Varsha Palav
for the Petitioners.

Sarvasri R.M. Hardix for P.N. Joshi
for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. The petitioners challenge the concurrent findings arrived at by the Courts below on the point of bona fide need of the premises for occupation thereof by the respondent/landlord on the ground that both the Courts failed to take note of the vacant premises acquired by the respondent during the pendency of the proceedings. The learned Advocate for the petitioners, drawing attention to the discussion regarding the evidence on record by the trial Court, submitted that it has been brought on record by the petitioners that various other premises were available to the respondent for occupation and yet the respondent has proceeded to seek eviction of

the petitioners from the suit premises and the same discloses lack of bona fide need of the suit premises by the respondent.

3. Undisputedly, bare perusal of the pleadings would disclose that apart from contending that the respondent is trying to get the suit premises vacated with the sole intention to get higher return in respect thereof by selling out the same, no other defence was sought to be raised in relation to the need of the premises for the occupation of the respondent. Indeed, there is a clear finding to that effect also by the lower Appellate Court in para 24 of the impugned judgment. It has been clearly observed therein that:-

> "If the pleadings of the defendant are considered then no specific plea regarding the suit filing with oblique motive has been raised. The only contention which is raised that plaintiff after getting vacated the suit premises intends to sell it at higher rate."

Undisputedly, no evidence was produced in support of the above quoted plea raised by the petitioners in answer to the eviction proceedings.

4. As regards the contention about the availability of the other premises, undisputedly, there are no pleadings in that regard. It is true that some evidence in that regard was sought to be brought on record by the petitioner. However, considering the ruling of the Apex Court in **Ram Nibas Gagar (Dead) by LRs. v. Debojyoti Das and others, reported** in (2003) 1 SCC 472, in the absence of amendment to the pleadings in that regard by the petitioners, they are not entitled to raise any plea on that count and no amount of evidence even if produced by the petitioners in that regard can be looked into or can enure to the benefit of the petitioners to get the suit for eviction dismissed against the respondent.

5. In the absence of any other ground being disclosed for interference in the impugned order, there being no case made out, the petition fails and is rejected with no order as to costs.